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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34128]

RailAmerica, Inc.–Control Exemption–New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C.¹

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a verified notice of exemption to acquire from StatesRail, L.L.C. (StatesRail) all of the outstanding stock of New StatesRail Holdings, Inc. (New StatesRail), and, through New StatesRail, to acquire control of its wholly owned subsidiary, the Alabama & Gulf Coast Railway, L.L.C. (Alabama & Gulf Coast), a Class III carrier.

The transaction is scheduled to be consummated on or after January 1, 2002.

On November 15, 2001, RailAmerica also filed a motion for protective order under CFR 1104.14, and the motion was granted.²

RailAmerica states that, as of its filing of the notice of exemption, it controls one

¹ On December 5, 2001, a protective order was issued in this proceeding. The title reflected the expected participation of West Texas and Lubbock Railroad Company, Inc. (West Texas). Because West Texas will not, in fact, be a party to the transaction, the above title has been revised to reflect that fact.

² See RailAmerica, Inc. and West Texas and Lubbock Railroad Company, Inc.–Control Exemption –New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C., STB Finance Docket No. 34128 (STB served Dec. 5, 2001).

Class II and 23 Class III rail common carriers operating in 23 states.³ However, in ParkSierra, infra, RailAmerica is acquiring control of a second Class II carrier.

RailAmerica also states that: (i) these railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier.⁴ Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because RailAmerica will control more than one Class II rail carrier, the transaction will be made subject to the labor protection conditions described in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

³ On December 7, 2001, RailAmerica also filed: (1) a notice of exemption in STB Finance Docket No. 34129, RailAmerica, Inc.-Control Exemption-StatesRail Acquisition Corp. and StatesRail, Inc., to continue in control of StatesRail Acquisition Corp. (Acquisition), and to obtain control of StatesRail, a holding company that controls Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co., all Class III railroads, upon the acquisition of all of the stock of StatesRail by Acquisition; and (2) a petition for exemption in STB Finance Docket No. 34130, RailAmerica, Inc.-Control Exemption-Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C., to acquire control of Kiamichi Holdings, Inc., and its subsidiary Kiamichi Railroad L.L.C.

⁴ RailAmerica has invoked the Board's class exemption procedures to acquire control of Class II rail carrier ParkSierra Corp. (ParkSierra) in RailAmerica, Inc.-Control Exemption-ParkSierra Acquisition Corp. and ParkSierra Corp., STB Finance Docket No. 34100 (STB served Dec. 20, 2001) (ParkSierra). RailAmerica indicates that ParkSierra's rail properties do not connect with those of Alabama & Gulf Coast or those of RailAmerica's other rail subsidiaries.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34128, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on (1) Gary A. Laakso, Esq., 5300 Broken Sound Blvd. N.W., Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

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Decided: December 20, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary